

S.B.Cr.Misc. Bail App. No.4786/2007
(Smt. Vimla Rathi & Anr. Vs. State)

Date of order : 15.11.2007

HON'BLE MR.H.R.PANWAR, J.

Mr. Sumer Dan for the petitioners.

Mr. Ashok Upadhyay, Public Prosecutor.

Heard learned counsel for the petitioners and the Public Prosecutor for the State. Perused the order impugned and the police investigation diary.

It is contended by learned counsel for the petitioners that petitioner No.1 Vimla Devi is registered owner of the vehicle ie. Tevera and petitioner No.2 Shyam Sunder being her husband is power of attorney holder of the said vehicle. He submits that petitioner No.1 Smt. Vimla by an agreement gave the vehicle to Sohan Ram s/o Baldeo Ram on 7.5.2006, a copy of the agreement is in the police investigation diary and learned counsel for the petitioner has shown me original agreement executed on 7.5.2006, attested by notary public, stating therein the vehicle has been given on hire @ Rs.21,000/- per month and it was Sohan Ram who ply the vehicle for a period of six months. There is specific averment in the agreement that the vehicle is given for six months. Within the period of six months, it is alleged that Sohan Ram was found containing contraband Poppy Straw in the vehicle. Learned counsel further submits that for the period of six months from the date of the agreement, the petitioners

have no control over the vehicle and it was Sohan Ram, who was in possession of the vehicle and if he uses the vehicle in contravention of the NDPS Act, then, the petitioners cannot be held liable.

This fact has not been disputed in the police investigation diary. It also appears that the investigating officer appeared before the Special Judge, NDPS Cases, Chittorgarh on 5th August, 2006 and made statement that the present petitioners are not found accused in the case.

Be that as it may, without commenting on the merit of the case, when the agreement has been executed between the parties and the petitioners were not in possession of the vehicle, I consider it just and proper to grant anticipatory bail to the petitioners.

Accordingly, the bail application filed by the petitioners under Section 438 Cr.P.C. is allowed and it is directed that in the event of arrest of petitioners (1) Smt. Vimla Rathi w/o Shyam Sunder Rathi and (2) Shyam Sunder s/o Kanhaiyalal Rathi in CR No.275/2006 P.S. Nimbahera, District Chittorgarh, they shall be released on bail for a period till the police concludes the investigation and files the challan provided each of them furnishes a personal bond in the sum of Rs.10,000/- along with one surety of like amount to the satisfaction of Investigating Officer to surrender and appear before the trial court on the date of filing of the challan after conclusion of the investigation on

the following order :

- (i) That they shall make themselves available for interrogation by a police officer as and when required;
- (ii) That they shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer and;
- (iii) That they shall not leave India without the previous permission of the Court.

The petitioners shall surrender before the trial court on the date of filing of the challan.

(H.R.PANWAR), J.